

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

teamLab Inc., a Japanese corporation,

Case No. 2:23-cv-01956-JAD-DJA

Plaintiff,

Order

V.

Arte Museum LV, LLC, a Delaware limited liability company; D'Strict Holdings, Inc., a Delaware corporation; and D'Strict Korea, Inc., a Korean corporation,

Defendants.

Before the Court is the parties' stipulated protective order. (ECF No. 33). The parties request that the Court enter a protective order to govern their exchange of confidential information. However, the parties fail to state the governing standard for filing documents under seal with the Court. This order reminds counsel that there is a presumption of public access to judicial files and records. A party seeking to file a confidential document under seal must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

IT IS THEREFORE ORDERED that the parties' stipulated protective order (ECF No. 33) is **granted subject to the following modifications:**

- The Court has adopted electronic filing procedures. Attorneys must file documents under seal using the Court's electronic filing procedures. *See Local Rule IA 10-5.* Papers filed with the Court under seal must be accompanied with a concurrently-filed motion for leave to file those documents under seal. *See Local Rule IA 10-5(a).* **This provision specifically modifies Section 15 in the parties' stipulation. (ECF No. 33 at 8).**

- 1 • The Court declines to adopt the parties' proposal in Section 8 of their stipulation
2 that the Court apply the same procedures for designating hearing and trial
3 testimony confidential as designating deposition testimony confidential. **Section 8**
4 **is specifically modified to apply only to deposition testimony. (ECF No. 33 at**
5 **4-5).** If the parties wish to designate hearing or trial testimony as confidential
6 under the terms of their protective order, they may file or make the appropriate
7 motion at that time.
- 8 • The Court has approved the instant protective order to facilitate discovery
9 exchanges, but there has been no showing, and the Court has not found, that any
10 specific documents are secret or confidential. The parties have not provided
11 specific facts supported by declarations or concrete examples to establish that a
12 protective order is required to protect any specific trade secret or other confidential
13 information pursuant to Rule 26(c) or that disclosure would cause an identifiable
14 and significant harm.
- 15 • All motions to seal shall address the standard articulated in *Ctr. for Auto Safety*
16 and explain why that standard has been met. 809 F.3d at 1097.
- 17 • Specifically, a party seeking to seal judicial records bears the burden of meeting
18 the "compelling reasons" standard, as previously articulated in *Kamakana*. 447
19 F.3d 1172. Under the compelling reasons standard, "a court may seal records only
20 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling,
21 without relying on hypothesis or conjecture.' *Ctr. for Auto Safety*, 809 F.3d at
22 1097. (quoting *Kamakana*, 447 F.3d at 1179). "The court must then
23 'conscientiously balance[] the competing interests of the public and the party who
24 seeks to keep certain judicial records secret.' *Ctr. for Auto Safety*, 809 F.3d at
25 1097.
- 26 • There is an exception to the compelling reasons standard where a party may satisfy
27 the less exacting "good cause" standard for sealed materials attached to a
28 discovery motion unrelated to the merits of the case. *Id.* "The good cause

language comes from Rule 26(c)(1), which governs the issuance of protective orders in the discovery process: ‘The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted.” *Phillips v. General Motors*, 307 F.3d 1206, 1210-11 (9th Cir. 2002).

- The labels of “dispositive” and “nondispositive” will not be the determinative factor for deciding which test to apply because the focal consideration is “whether the motion is more than tangentially related to the merits of a case.” *Ctr. for Auto Safety*, 809 F.3d at 1101.
- The fact that the Court has entered the instant stipulated protective order and that a party has designated a document as confidential pursuant to that protective order does not, standing alone, establish sufficient grounds to seal a filed document. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003); *see also Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). If the sole ground for a motion to seal is that the opposing party (or non-party) has designated a document as confidential, the designator shall file (within seven days of the filing of the motion to seal) either (1) a declaration establishing sufficient justification for sealing each document at issue or (2) a notice of withdrawal of the designation(s) and consent to unsealing. If neither filing is made, the Court may order the document(s) unsealed without further notice.

26 ///

27 ///

28 ///

- 1 • To the extent any aspect of the stipulated protective order may conflict with this
2 order or Local Rule IA 10-5, that aspect of the stipulated protective order is hereby
3 superseded with this order.

4 IT IS SO ORDERED.

5
6 DATED: June 10, 2024

7
8 
9 DANIEL J. ALBREGTS
10 UNITED STATES MAGISTRATE JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28